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June 30, 2000

BY HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

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JUN 30 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re:


In the Matter of
Amendment of Section 73.202(b)
Table of Allotments, FM Broadcast
Stations (Thorndale, Texas)
MM Docket No. 99-243/RM-9675

Dear Ms. Salas:

Transmitted herewith on behalf of Cameron Broadcasting Company are an original and four (4) copies of its "Motion to Strike Supplement to Comments of Houston Christian Broadcasters, Inc." as directed to the Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,


Henry E. Crawford
Counsel for
Cameron Broadcasting
Company

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of Section 73.202(b) Table of
Allotments, FM Broadcast Stations
(Thorndale, Texas)

MM Docket No. 99-243
RM-9675

To: The Chief, Allocations Branch

**MOTION TO STRIKE SUPPLEMENT TO COMMENTS OF HOUSTON
CHRISTIAN BROADCASTERS, INC.**

Cameron Broadcasting Company ("Cameron"), by counsel, pursuant to 47 CFR §1.45 respectfully submits its *Motion to Strike Supplement to Comments of Houston Christian Broadcasters, Inc.* filed in response to the *Supplement to Comments of Houston Christian Broadcasters, Inc.* ("Supplement") filed on June 16, 2000, by Houston Christian Broadcasters, Inc. ("HCBI"). In support thereof, the following is stated:

1. On April 21, 2000, the Commission released its Report & Order in The Reexamination of the Comparative Standards for Noncommercial Educational Applications, FCC 00-120 ("Report & Order"). As pointed out by HCBI in its Supplement, the Report & Order represents a new policy for processing new noncommercial broadcast applications. The policy provides a method for handling noncommercial applications filed in commercial proceedings such as the one filed in the instant case by HCBI for the community of Thorndale, Texas. However, that method is exactly opposite of the approach suggested by HCBI in the Supplement.

2. According to the Report & Order:

Mutually exclusive applications for new broadcast stations on channels available for commercial use...will be auctioned regardless of whether one or more of the applicants is eligible to use reserved channels. Such auctions will, in general, be conducted using our newly established auction rules.

Report & Order, ¶ 111. As this passage explains, HCBI is not entitled to a new channel with cut-off protection. It is only entitled to participate in the upcoming auction for the Thorndale station. Consequently, HCBI is not entitled to the relief that it seeks in the instant rulemaking proceeding and the allocations branch should terminate this proceeding accordingly.

3. To allow HCBI to obtain a reserved channel in this proceeding would be wholly contrary to the directive set out in the Report & Order. It would have a direct impact on the Thorndale auction by rendering it less competitive. It would also prejudice every other Thorndale applicant by arbitrarily allowing one mutually exclusive applicant to escape the auction requirement.

4. In its original petition for rulemaking, HCBI set out the entire rationale for reserving the Thorndale channel for noncommercial use:

The Thorndale FM proceeding...remains "frozen" with no resolution in sight due to [the] "mix" of commercial and noncommercial applicants.

HCBI Petition for Rulemaking, p. 3, ¶2. That process was viewed by HCBI as:

...the only impediment that presently exists to the resolution of the Thorndale FM proceeding through the competitive bidding process. Such a resolution, as proposed herein, will expedite the establishment of both a first and a second local FM service....

Id., ¶ 3. With the release of the Report & Order, that single impediment has now been removed and the Commission now has in place a well designed system for handling the Thorndale applications. Thus, HCBI's rationale for initiating this rulemaking proceeding no longer has any merit at all and the proceeding itself should be terminated in accordance with the Report & Order.

5. The Report & Order also set up a method for future noncommercial allocations. In the Supplement, HCBI attempts to hop on board this bandwagon. However, the Report & Order is very clear that these new rules only apply to future allocation proceedings:

For these **future** allocations requests, an NCE entity can show that the need for an NCE station....

Report & Order, ¶ 114. Hence, whatever showing can be made in future allocation proceedings cannot be made in this one.

6. The Commission was very clear regarding the prospective application of Report & Order. In response to comments arguing for retroactive application of the rules to existing rulemakings, the Commission held that such showings would not apply to existing allocation proceedings:

As indicated above, the University of Arizona is concerned that easier allocation of spectrum in the future will not help existing NCE applicants who already have filed applications to use commercially available channels. The University of Arizona suggests that we apply a needs test to existing proceedings similar to that adopted for future proceedings. **We have considered, but have decided not to adopt, this suggestion.** We currently have approximately 250 applications in which commercial and noncommercial educational applicants are competing for approximately 45 channels which were commercially available at the time of application. The nature of each such channel

has been considered previously in a rule making proceeding and, after the opportunity for public comment, was identified as commercially available in the table of allotments in our rules. Both commercial entities and noncommercial entities that applied for those channels did so with full knowledge that their applications would be considered under commercial standards.

It is in accord with the original expectations of all applicants to require NCE applicants to "play by commercial rules" as anticipated, even if that means participating in auctions. Accordingly, as in the Competitive Bidding proceeding, existing applications for commercially available channels will be resolved by auction. We recognize that, due to funding concerns, many NCE applicants may be unable to participate or prevail in an auction. We would encourage such applicants to use the new needs test discussed above to initiate rule making proceedings to allocate other channels exclusively for NCE use.

Report & Order, pp. 50-51, ¶ 116-117. This passage could not be any clearer.

The showing suggested by HCBI is wholly inappropriate in the context of this proceeding.

7. Even if the HCBI showing were appropriate in this context, which it is not, HCBI would not be helped. The test requires that the NCE proponent be technically precluded from using the reserved band. That is not the case here. As Cameron has amply demonstrated throughout this proceeding, a noncommercial FM station on Channel 211A can be applied for at Thorndale in full compliance with the technical rules governing noncommercial FM stations. While HCBI has quarreled over fact that it would have less power than its proposed commercial frequency, it has not demonstrated that a viable NCE

facility is totally precluded at Thorndale. Therefore, even if the showing suggested by HCBI was appropriate, it would be of no avail to HCBI.

8. With the release of the Report & Order the Commission has now issued guidelines for processing mixed commercial and noncommercial mutually exclusive FM applications. Accordingly to those guidelines, HCBI can only seek to obtain the Thorndale construction permit at auction. If HCBI was seriously interested in serving the Thorndale community, it could also apply for a new NCE station on Channel 211A once the present freeze on noncommercial facilities is lifted. It was the lack of a procedure in this area that caused HCBI to file this rulemaking in the first instance. Now that this matter has been settled, the Commission should terminate this proceeding as null and void since it was premised upon a defective petition that has now been obviated by the Report & Order.

9. In sum, the Supplement filed by HCBI is procedurally and substantively without merit in this proceeding. HCBI is not entitled to avoid the auctioning of the channel. Even if it were appropriate to apply the new policy in this proceeding, HCBI could not rely on the new policy because of the existence of a viable noncommercial channel that is fully compliant with the Commission's noncommercial rules.

WHEREFORE, Cameron Broadcasting Company respectfully requests that the Supplement to Comments of Houston Christian Broadcasters, Inc. be stricken in its entirety.

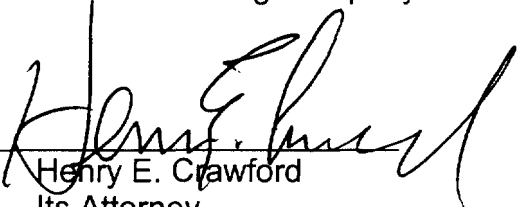
June 30, 2000

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Respectfully Submitted,

Cameron Broadcasting Company

By:


Henry E. Crawford
Its Attorney

CERTIFICATE OF SERVICE

I, Angela Y. Powell, do hereby certify that copies of the foregoing Motion to Strike Supplement to Comments of Houston Christian Broadcasters, Inc. have been served by United States mail, postage prepaid this 30th day of June, 2000 upon the following:

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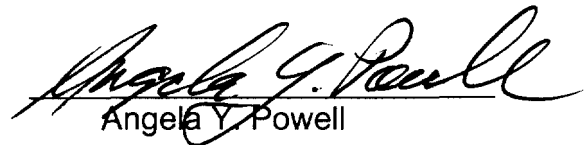
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